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Lie Detectors Continue to Make Waves

Area Employers Skirt D.C. Ban on Polygraphs

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Requiring job applicants to take a polygraph test before they are hired has been illegal in the District of Columbia since 1978. But when Mary C. Brazell applied for a job recently at the Radio Shack store at 1835 K St. NW, she was told she would have to take a lie-detector test.

Acknowledging the D.C. law, a Radio Shack executive who interviewed Brazell in Arlington told her that she could take the test in Virginia—where the law does not restrict polygraph use.

"I reminded him that he had told me polygraph testing is illegal in the District of Columbia and he said, 'Yes, but we have a loophole here. You have not been assigned to a specific store yet,'" she said.

Brazell agreed to take the test, but did not tell the Radio Shack people she already had a job—as an aide to Jay Harvey, legislative director of the AFL-CIO's Food and Allied Services Trades Department, one of the leading opponents of lie-detector testing of employees.

After passing the test—"I honestly had the feeling of awaiting the electric chair," she said—Brazell was offered a job at a Radio Shack store on Connecticut Avenue. She turned it down without telling the company she was gathering evidence for the union.

Stephen R. Nohowel, the Radio Shack executive with whom Brazell spoke, acknowledged meeting with her, but after being told

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in detail of her allegations, said, "I don't have a comment to make. . . . It's not our policy to talk to reporters."

The legal status of polygraph use by employers in the Washington area is confused by conflicting laws in the three jurisdictions and the large number of areawide businesses that operate without regard to geographic bound-

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aries. The District generally bans the tests under any circumstances, while Virginia does not restrict them at all, and Maryland allows employers to request applicants and workers to take a test, but not to require one.

The D.C. law as originally proposed would have prohibited employers from using polygraphs "inside or outside" the District, City Council sources said, but the law had to be amended because the District has no jurisdiction outside its borders.

Brazell was given her test by Jay Wilt of Diversified Detection in Annandale. Wilt said he will not perform tests for D.C. employers, except for criminal attorneys, but does not ask those who make appointments for his services where prospective employees will work. "What store they are placing them in is not my concern," Wilt said.

Arthur B. Spitzer, legal director for the American Civil Liberties Union, said the law is "poorly drafted." But, he contends the law "would make it unlawful . . . for a D.C. employer to send its employees or applicants to Virginia to have a . . . test administered there."

"It would similarly make it unlawful for a regional employer to require all applicants for employment—including those who would be employed in the District—to submit to lie-detector tests administered at its central personnel office in Virginia," Spitzer said.

The ACLU's interpretation has never been endorsed by courts in the District because no cases ever have been filed under the law, which provides a maximum punishment for violators of a \$500 fine and 30 days in jail.

"No one can remember ever prosecuting anything under that statute," said Thomas Simms, special counsel to the D.C. corporation counsel. "Something has to 'happen' before there is a prosecution." As to whether the corporation counsel could decline to prosecute any given polygraph case, "There is always a certain amount of discretion in prosecuting any case," Simms said.

The District's antipolygraph law sprang from a much-publicized case involving the old Discount Book and Record Shop. In 1975, unionized clerks at the Connecticut Avenue store picketed to protest the dismissal of seven employees they said were fired for refusing to submit to lie-detector tests. The store's owner, Bob Bialek, contended mandatory tests were necessary to prevent theft.

D.C. Council member Wilhelmina J. Rolark, who chairs the Committee on Employment and Economic Development, said that before the law was passed "several private D.C. employers were using those tests . . . for pre-employment [testing] and spot checks."

The law halted lie-detector use in many D.C. businesses. For example, Clyde's of Georgetown said it stopped using the tests after the law was passed; it had been testing employees every 90 to 120 days for five or six years. Asked if the law was a plus or a minus

for Clyde's, co-owner John G. Latham said, "I think you lose a lot."

The polygraph "changed dramatically the whole relationship between management and employees," said Latham. The testing contributed to "a very good, positive relationship"—one in which the employer did not have to "look over the employees' shoulders." It "absolutely" removed any suspicion of internal theft, he said.

Clyde's polygrapher "ended up being very good friends of many of the employees," Latham said.

The Metropolitan Washington Board of Trade does not support the D.C. law. Said Sam Christine, manager of the board's legislative fiscal bureau, "There is literally billions of dollars worth of employee theft each year, and the polygraph is just one way to get a handle on who's telling the truth. I believe . . . the polygraph is accurate; what is sometimes a problem is the person who interprets the data," he said.

Christine said the Board of Trade does not believe the claim by some polygraph advocates that businesses are moving out of the District because of the anti-lie-detector law.

"Every day businesses move out because of the restrictions they put on" polygraphing in the District, claimed Robert D. Arscott, director of Sting Security in Marlow Heights. He said his firm collected \$200,000 of its \$4 million in revenue last year doing polygraph tests.

Arscott said no polygraphing is performed in the District, although businesses "could come out to us." He said that if the company is a D.C. corporation, "we can't help them; they are stuck." But companies with stores in both the District and Maryland can send their employees to Maryland for a test.

He said businesses are "ripped off left and right, and once they do a polygraph program, they usually reduce their shrinkage." Arscott's company performs work for car dealerships, sporting-goods stores, fast-food stores and real-estate companies.

"We do quite a bit, we do 75 to 80 [tests] a week . . . for several employers," said Arscott, a former detective lieutenant with the D.C. Metropolitan Police Department.

Employees are asked to sign a release with the employer that the test is not a condition of employment, said Arscott. About 80 percent of the people who take the test are "cleared," he said. But sometimes, the company discovers the applicant is a drug user or on parole. "We've done some that were wanted and almost hired for a job," he said.

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Those that refuse to take a test are "checked a little harder" by Arscott's company. "Because why would somebody not want to take it unless they had something to hide?"

"For the most part, the District government says you have to hire thieves and junkies, that is what it amounts to," said Arscott.

Raymond J. Weir, president of the Washington-based Weir Polygraph Services, said "What has been advocated is the freedom to lie with impunity to an employer or anyone else."

Several large local companies have union contracts that prohibit the use of the polygraph unless the union agrees in writing. These companies include Giant Food Inc., Magruder's Grocery, A&P, Safeway Stores, Woodward & Lothrop and Brooks Bros.

Felicia Del Campo, public affairs manager for Safeway, said, "We feel there is no proof that the polygraph works for this purpose," she said. Employees suspected of theft sometimes are asked to take the test, she said. "But it's not mandated, and we don't use it regularly or to any great extent."

Hecht's, which operates 23 stores, said the store's policy is "absolutely not" to use polygraphs for preemployment screening. "We still think that the best method is the interview technique, following up by checking out references and questions," said Kenneth B. Winfield, senior vice president for administrative services. Hecht's does use polygraphs for investigations, "but very rarely," he said.

Drug Fair Drug Stores, which has 75 stores in the metropolitan area, does no preemployment polygraphing at all, according to Sally Domm, representative of the company's parent, Cleveland-based Sherwin-Williams Co.

People's Drug Stores Inc. used to use the polygraph for preemployment screening, but stopped in 1977, before the D.C. law was enacted. "We found it a cumbersome process for the large number of employees we hire," said Jerry V. Wilson, vice president for security and a former D.C. police chief. "Since then, People's uses the instrument only occasionally for investigative purposes."

Last summer, the National Association of Chain Drug Stores Inc. told Congress that it was opposed to any legislation banning polygraph examinations and called them "invaluable" in deterring theft.

"Outlawing polygraphs would result in higher costs to the consumer," said Jim Krahulec, vice president of government and trade relations for Rite Aid Corp., on behalf of the national association. Rite Aid operates 101 stores in Maryland and 33 in Virginia.

7-Eleven Stores, operated and franchised by Southland Corp. of Dallas, operates 600 owned or franchised stores in the District, Maryland, Virginia and West Virginia. The company uses the polygraph for preemployment purposes or investigations only if state statutes permit it, said James R. Fisher, division security manager for 7-Eleven Stores. For investigations, "we use them on occasion, but rarely. . . . We felt there are better ways to investigate that are more conclusive and will stand up in court rather than using the polygraph." ■